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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 008881

SIPDIS

DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#)

SUBJECT: GOT'S LATEST REFORM PACKAGE - SCORECARD AND ANALYSIS

REF: A. ANKARA 8586

[B](#). ANKARA 7290

[C](#). ANKARA 6116

[D](#). ANKARA 8569

Classified by DCM Robert Deutsch; reasons 1.5 b and d.

[1](#)1. (U) Summary: The GOT has prepared extensive legislative reforms designed to crack down on torture and remove barriers to free expression, association, and fair trial. Parliament will likely pass the reforms quickly, possibly before or during the December 12-13 EU Summit in Copenhagen. The reforms will bring Turkey significantly closer to meeting EU membership criteria. End Summary.

[1](#)2. (U) The new GOT administration has completed its list of proposed legislative reforms; during Cabinet review the original 36-article draft (Reftel A) was broken into two packages, with a few controversial measures separated from the rest. The parliamentary Constitutional and Justice committees will review the packages December 10 and the full Parliament is scheduled to take them up December 11. GOT officials say they expect both packages to be approved in December, and hope the first can be passed before or during the December 12-13 EU Summit.

[1](#)3. (U) The following is a summary and analysis of the key elements of the two packages:

FIRST PACKAGE

[1](#)4. (C) Torture: In torture cases, judges will not have the authority to suspend sentences or convert prison sentences to fines. In cases where a civil servant is accused of torture, it will no longer be necessary to receive permission from the civil servant's supervisor in order to investigate.

-- Analysis: Eliminates two important elements of the climate of impunity for torturers and sends a very strong signal that the GOT is getting serious about the problem. In current practice, it is extremely difficult to investigate police accused of torture, and even when police are tried and convicted they rarely do jail time.

[1](#)5. (U) Non-Muslim Foundations: Non-Muslim foundations will be able to acquire property with the permission of the General Directorate of Foundations. Currently, foundations must receive permission from the Cabinet.

-- Analysis: Addresses one of the shortcomings of the recent legislation on non-Muslim foundations, but not others. For example, existing regulations appear to apply only to the minority groups traditionally recognized under the Lausanne Treaty -- Greek Orthodox, Armenian Orthodox, and Jews (Reftel B).

[1](#)6. (U) Press: It will not be possible to force the owners of media outlets to disclose news sources.

-- Analysis: The amendment refers to "owners," and it is unclear how broadly it would be applied. A human rights attorney told poloff he believed it would also cover reporters.

[1](#)7. (C) Parliamentary/Political Party Eligibility: The list of criminal convictions rendering someone ineligible to be

elected to Parliament or join a political party will be shortened. Most importantly, convictions under Penal Code Article 312, relating to illegal speech, will no longer constitute an ineligibility. Persons will generally be ineligible to join a political party if they have been sentenced to five or more years imprisonment, up from the current standard of more than three years. Anyone convicted of committing "terrorist acts" will be barred from Parliament and political parties.

-- Analysis: Article 312 is one of the measures most commonly used by the State to limit free expression and keep "threatening" figures (Islamists, leftists, Kurdish activists) out of politics. Recep Tayyip Erdogan, leader of the ruling AK Party, is currently prevented from assuming the title of Prime Minister because of a 312 conviction. One flaw in this amendment: there is no definition of "terrorist acts," a charge that has been applied broadly to include such acts as chanting slogans in Kurdish or demanding education in Kurdish.

18. (U) Party Closure: A three-fifths majority of the 11-member Constitutional Court will be required to close a political party; the law currently requires only a simple majority. Also, it will be possible to close parties only for reasons stated in the Constitution; current law also allows for closure under the more extensive reasons cited in the Political Parties Law. While the wording of the Constitution is designed to outlaw party activities that threaten the "independence and territorial integrity of the State," the Political Parties Law cites a long list of specific prohibitions, for example against parties that "rest on the foundation of region," "engage in activities abroad," or use languages other than Turkish. Parties will have the right to appeal closure rulings.

-- Analysis: Closure, or the threat of closure, has been used repeatedly against Islamist and pro-Kurdish parties, and some of the measures have been approved by a simple 6-5 majority.

19. (C) Associations: A number of restrictions on associations will be removed. It will be possible to create associations for any purpose not in violation of the Constitution or laws pertaining to national security, public health and order, and the liberty of others. Current law includes a list of specific purposes for which associations cannot be created. Associations will be required to use the Turkish language only in written communication with official GOT institutions; currently they are required to use Turkish for all communication. Associations will no longer be required to notify a local government official 24 hours in advance of releasing a statement. Turkish associations will have more freedom to establish branches abroad and interact with international associations, and international associations will have more freedom to operate in Turkey.

-- Analysis: Eliminates a series of highly restrictive measures that have been used to restrict the free expression of various groups. The current notification requirement for statements serves as a form of censorship -- local officials often ban statements before they are released. These restrictions have damaged Turkey's international image, particularly due to their impact in foreign organizations.

110. (U) Attorney Access: Suspects charged in State Security Courts, which generally handle terrorist and separatist cases, will have the right to immediate attorney access. Currently they are entitled to see an attorney after 48 hours. Suspects accused of ordinary crimes are already allowed immediate attorney access.

SECOND PACKAGE

11. (C) Retrial Pursuant to ECHR Rulings: Defendants convicted in Turkish courts will be able to apply for a retrial if the European Court of Human Rights (ECHR) rules/has ruled in their favor. This amendment will apply to cases in which the ECHR has ruled prior to the passage of the legislation, as well as to cases brought to the ECHR following passage. However, it will not apply to cases under ECHR review at the time of passage. A more limited measure passed in August (Reftel C) applies only to cases brought to the ECHR starting in 2003.

-- Analysis: The EU's Copenhagen Political Criteria require Turkey to address the issue of prisoners currently jailed for non-violent political activity, something the August amendment failed to do. Thus, this measure removes one of the more substantial arguments against Turkey's EU candidacy. This opens the door to a retrial in the high-profile case of Leyla Zana, former parliamentarian from the pro-Kurdish DEP Party, as well as an estimated 300 other current prisoners. The dubious exception for cases currently under ECHR review is designed to prevent jailed PKK leader Abdullah Ocalan from seeking a retrial. This legal sleight of hand is unlikely to draw much protest from the EU -- local European diplomats tell us their governments do not want to see a new trial for Ocalan.

12. (C) Student Suspensions: Students suspended from universities for wearing Islamic head covering or for demanding education in Kurdish will have their suspensions erased and their disciplinary records annulled.

-- Analysis: The new GOT has generally been downplaying Islamic issues to avoid alarming those concerned about AK Party's perceived Islamist roots. Combining the headscarf issue with Kurdish language rights is a smart move -- it places the headscarf controversy in a broader context and may win points with a Kurdish community generally suspicious that AK will focus exclusively on Islamic rights at their expense.

COMMENT - WHAT'S MISSING?

13. (C) The AK Government has done everything possible, given the short period since it took power Nov. 18, to carry out human rights reform and enhance Turkey's EU prospects at Copenhagen. AK has also indicated a desire to tackle more deeply rooted obstacles to reform, which will require far more than legislation. AK leaders are now trying to build a broad consensus in favor of dismantling and reforming the restrictive State apparatus that has been a focal point of EU and western criticism. In pursuing this agenda, AK is likely to draw substantial support from a Turkish public eager for change. Nevertheless, it will face stiff resistance from bureaucratic and other elements of the State interested in maintaining the status quo -- and their privileged place in it. The key obstacles that need to be addressed are:

-- Redrafting Laws: The GOT packages are informed by a constitution, written under the direction of the military after the 1980 coup, that has been an obstacle to democratization. PM Gul has announced his Government's desire to draft a new, more flexible and open constitution. However, AK will have to be careful to avoid charges that it is "undermining Kemalism" -- explicitly prohibited by the current constitutional framework -- or promoting "reactionary" Islam.

-- The Southeast: The GOT has lifted the state of emergency in the southeast, but has no "post war" plan for developing the region (Reftel D). The EU's Copenhagen Criteria require Turkey to develop such a plan.

-- Civil-Military Relations: The GOT has increased the number of civilian members of the National Security Council, but the military still plays an often dominant role in government, a fact often cited by European diplomats skeptical of Turkey's EU candidacy (septel). The Copenhagen Criteria specify the need to limit the NSC to its formal, advisory role.

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